

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

## DOLLY BELLE,

Case No. 2:19-cv-00077-JAD-GWF

Plaintiff,

## ORDER

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

## Defendants.

13 This matter is before the Court on Plaintiff's Application to Proceed In Forma Pauperis  
14 (ECF No. 1), filed on January 18, 2019.

## BACKGROUND

16 Plaintiff is proceeding *pro se*. She alleges a claim against the Social Security  
17 Administration (SSA). Plaintiff appears to challenge its denial of social security benefits on behalf  
18 of her son. Plaintiff appears to allege that the Social Security Commissioner denied his social  
19 security benefits and seeks judicial review of that decision.

## DISCUSSION

## 21 || I. Application to Proceed *In Forma Pauperis*

Plaintiff filed this instant action and attached a financial affidavit to her application and complaint as required by 28 U.S.C. § 1915(a). Having reviewed Plaintiff's financial affidavit pursuant to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. Therefore, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

## 26 II. Representation of Minor Children

Plaintiff is proceeding *pro se* and is the named Plaintiff in this matter. Although not explicitly stated, it appears that she attempts to bring a claim on behalf of her minor child. A

1 litigant in federal court has a right to act as his or her own counsel. *See* 28 U.S.C. § 1654 (1982).  
2 The Ninth Circuit, however, has expressly held that “a parent or guardian cannot bring an action  
3 on behalf of a minor child without retaining a lawyer. *Tagle v. Clark Cty.*, 2016 WL 1064474, at  
4 \*2 (D. Nev. Mar. 17, 2016), *aff’d*, 678 F. App’x 600 (9th Cir. 2017) (quoting *Johns v. Cty. of San  
5 Diego*, 114 F.3d 874, 877 (9th Cir. 1997)). The choice to appear *pro se* is not a true choice for  
6 minors who under state law cannot determine their own legal actions. *Id. See also* Fed. R. Civ. P.  
7 1(b). There is thus no individual choice to proceed *pro se* for courts to respect, and the sole policy  
8 at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others.  
9 *Johns*, 114 F.3d at 876. Where they have claims that require adjudication, they are entitled to  
10 trained legal assistance so their rights may be fully protected. *Id.*

11 A parent or guardian cannot bring an action on behalf of a minor child without retaining a  
12 lawyer. Because Plaintiff is not represented by an attorney in this matter, she may not bring claims  
13 on behalf of her minor child. Plaintiff must, therefore, retain new counsel if she intends to litigate  
14 this matter. Plaintiff shall have until **February 15, 2019** to advise the Court if she will retain new  
15 counsel.

16 **III. Screening of the Complaint**

17 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen  
18 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
19 dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which  
20 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is  
21 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be  
22 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a  
23 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to  
24 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). When a court dismisses a  
25 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with  
26 directions as to curing its deficiencies, unless it is clear from the face of the complaint that the  
27 deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106  
28 (9th Cir. 1995).

1 To satisfy the screening requirements with respect to social security appeals, a plaintiff  
2 must set forth the following: (1) the plaintiff must establish that she has exhausted her  
3 administrative remedies pursuant to 42 U.S.C. § 405(g), and that the civil action was commenced  
4 within sixty days after notice of a final decision; (2) the complaint must indicate the judicial  
5 district in which the plaintiff resides; (3) the complaint must state the nature of the plaintiff's  
6 disability and when the plaintiff claims she became disabled; and (4) the complaint must contain  
7 a plain, short, and concise statement identifying the nature of the plaintiff's disagreement with  
8 the determination made by the Social Security Administration and show that the plaintiff is  
9 entitled to relief. *Montoya v. Colvin*, 2016 WL 890922, at \*2 (D. Nev. Mar. 8, 2016) (citing  
10 *Soete v. Colvin*, 2013 WL 5947231, \*2 (D. Nev. Nov. 4, 2013); *Pitcher v. Astrue*, 2012 WL  
11 3780354, \*1 (D. Nev. Aug. 30, 2012)).

12 The Court will refrain from screening Plaintiff's complaint until she advises the Court as  
13 to whether she will retain counsel to continue to litigate this matter.

14       **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *In Forma Pauperis*  
15       (ECF No. 1) is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four  
16       hundred dollars (\$400.00).

17       **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to  
18 conclusion without the necessity of prepayment of any additional fees or costs or the giving of  
19 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the  
20 issuance of subpoenas at government expense

21       **IT IS FURTHER ORDERED** that Plaintiff shall have until **February 15, 2019** to  
22 advise the Court if she will retain new counsel.

23 || Dated this 18th day of January, 2019.

George Foley Jr.  
GEORGE FOLEY, JR.  
UNITED STATES MAGISTRATE JUDGE